



Homeland
Security

May 30, 2011

Mr. Jason Smathers
MuckRock
185 Beacon St. #3
Somerville, MA 02143

Re: **DHS/OS/PRIV 11-0810**

Dear Mr. Smathers:

This acknowledges receipt of your May 10, 2011, Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), in which you seek all memos sent from the Chief Privacy Officer to DHS staff working with FOIA requests. You are seeking responsive records to those created on or after January 20, 2009.

Your request was received in this office on May 11, 2011.

As for your request for designation as a "representative of the news media," your request is denied. DHS FOIA regulations specifically define "representative of the news media" as "any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public." 6 C.F.R. § 5.11(b)(6). Based on the information contained in your letter, I am denying your request for this fee status because you have not presented a convincing argument that MuckRock is an entity organized and operated to publish or broadcast news to the public.

Although your request for "representative of the news media" status is denied, you are entitled to two hours of search time and 100 pages of releasable records free of any charges. 6 C.F.R. § 5.11(d)(3). Should search time exceed two hours and duplication costs exceed 100 pages, we will charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requestors. However, we are holding your fee waiver request in abeyance pending the review and quantification of responsive records.

As it relates to your fee waiver request, I have reviewed your letter thoroughly and have determined that you have not presented a convincing argument that Muckrock is entitled to a blanket waiver of fees.

The DHS FOIA Regulations, 6 CFR § 5.11(k)(2), set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met. We will consider these factors in our evaluation of your request for a fee waiver:

- (1) Whether the subject of the requested records concerns "the operations or activities of the government;"
- (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;
- (4) Whether the contribution to public understanding of government operations or activities will be "significant;"
- (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

As a requester, you bear the burden under the FOIA of showing that the fee waiver requirements have been met. Based on my review of your May 10, 2011, letter and for the reasons stated herein, I have determined that your fee waiver request is deficient. As the records in question pertain to actual or alleged government activity and the disclosure is likely to contribute to an understanding of government operations or activities, your request meets the first and second factor. I determined that factors three through six have not been met. Since your request for a fee waiver has failed to satisfy each of the required factors, I am denying your fee waiver request.

If you deem the decision to deny media status and fee waiver request an adverse determination, you may exercise your appeal rights. Should you wish to do so, you must **send your appeal within 60 days of the date of this letter** to: Office of the General Counsel, U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in Subpart A, Section 5.9, of the DHS Regulations. Your envelope and letter should be marked "Freedom of Information Act Appeal." The implementing Department regulations establish the criteria under which the FOIA is administered. Copies of the FOIA and regulations are available at www.DHS.gov, Internet, accessed May 23, 2011.

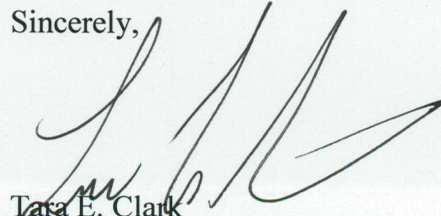
Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

We have queried the appropriate component of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that

one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **DHS/OS/PRIV 11-0810**. Please refer to this identifier in any future correspondence. You may contact this office at 866-431-0486 or at 703-235-0790.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tara E. Clark', written over the printed name.

Tara E. Clark
Senior FOIA Program Specialist